



**US Army Corps
of Engineers
Louisville District**

Public Notice

Public Notice No.

200400999

Date:

16 Aug 04

Closing Date:

07 Sept 04

Please address all comments and inquiries to:

U.S. Army Corps of Engineers, Louisville District

ATTN: Mr. Todd Hagman, CELRL-OP-FS

Eastern Kentucky Regulatory Office

845 Sassafras Creek Road

Sassafras, Kentucky 41759

Phone: (606) 642-3404

This notice announces an application submitted for a Department of the Army (DA) Permit, subject to Section 404 of the Clean Water Act (CWA)

APPLICANT: Consol of Kentucky, Inc.
PO Box 130
KY Hwy 550
Mousie, Kentucky 41839

AGENT: Walturn Engineering, Inc.
P.O. Box 130
4142 Ky Rt 550
Hueysville, Kentucky 41640

LOCATION: This project is located within the watersheds of Meadow Branch and Collins Fork of Carr Fork approximately 1 mile southeast of the community of Omaha in Knott County, Kentucky.

Latitude: 37° 15' 58"
Longitude: 82° 49' 08"
7.5 Minute Quadrangle: Kite, KY

PURPOSE: To construct permanent spoil fills for disposal of excess overburden and temporary embankments for sediment control ponds associated with the subject surface coal mining operation.

DESCRIPTION OF WORK: The applicant proposes to construct 2 permanent spoil disposal fills and 2 temporary sediment ponds in association with a new surface mining authorization. The applicant is pending authorization for this operation from the Kentucky Department of Natural Resources (KDNR #867-0447). The operation would use the surface area method, surface contour, and surface auger/highwall methods of surface mining to remove the Whitesburg, Hazard #4, and Hazard #8 coal seams. Hollow Fill #1 would impact 580 linear feet of intermittent stream reach and 554 linear feet of ephemeral stream reach within Collins Branch. Hollow Fill #2 would impact 1,804 linear feet of ephemeral stream reach of Meadow Branch. The drainage area at the toe of the fills for Collins Branch and Meadow Branch are 130 and 192 acres respectively. In addition, 231 linear feet of intermittent stream of Collins Branch and 230 linear feet of ephemeral stream reach of Meadow Branch would be temporarily impacted by sediment transport as the "drainage corridors" between the hollow fill areas and sediment ponds.

MITIGATION: At this time, the applicant has submitted no mitigation plan. However, a detailed mitigation plan, consisting of on-site and off-site mitigation areas, will be provided at a later date.

It is noted that this proposed mitigation plan is open to comment and subject to change. The Corps will make a determination of appropriate mitigation, upon review of all submitted information.

REVIEW PROCEDURES: A DA Permit cannot be issued if any legally required Federal, State, or local authorization or certification is denied. A DA Permit, if otherwise warranted, will not be issued until a State of Kentucky Water Quality Certification or waiver is on file at this office. In order to comply with Section 401 of the Clean Water Act, the applicant, by this notice, hereby applies for State certification from the Kentucky Natural Resources and Environmental Protection Cabinet Division of Water (KDOW).

Copies of this notice are sent to the appropriate Federal and State Fish and Wildlife Agencies. Their views and comments are solicited in accordance with the Fish and Wildlife Coordination Act of 1956. Based on available information, the proposed activity will not destroy or endanger any Federally-listed threatened or endangered species or their critical habitats, as identified under the Endangered Species Act, and therefore, initiation of formal consultation procedures with the U.S. Fish and Wildlife Service is not planned at this time.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider this application. A request for a public hearing must state the specific interest that might be damaged by issuance of the DA Permit.

The National Register of Historic Places has been examined, and it has been determined that there are no properties currently listed on the Register which would be directly affected by the proposed work. If we are made aware, as a result of comments received in response to this notice, or by other means, of specific archaeological, scientific, pre-historical, or historical sites or structures which might be affected by the proposed work, the District Engineer will immediately take the appropriate action necessary pursuant to the National Historic Preservation Act of 1966 - Public Law 89-665 as amended (including Public Law 96-515).

The decision whether to issue a permit will be based on an evaluation of the probable impact of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits that reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered; among those are conservation, economics, aesthetic values, general environmental concerns, historic values, fish and wildlife values, flood damage prevention, land use, navigation, recreation, water supply, water quality, energy needs,

safety, food production, and in general, the needs and welfare of the public. In addition, the evaluation of the impact of the activity on the public interest will include application of the guidelines (40 CFR Part 230) promulgated by the Administrator, Environmental Protection Agency, under authority of Section 404(b) of the CWA.

The Corps of Engineers is soliciting comments from the public; Federal, State, and local agencies and officials; Indian tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Written statements received in this office on or before the closing date will become a part of the official record and will be considered in the determination on this permit request. Any objections that are received during this period will be forwarded to the applicant for possible resolution before the determination is made whether to issue or deny the requested DA Permit. A permit will be granted unless its issuance is found to be contrary to the public interest.

Information pertaining to this application is available for public examination during normal business hours upon prior request. All comments regarding this proposal should be addressed to Mr. Todd Hagman, CEORL-OP-FS at the address noted above and should refer to the Public Notice Number 200400999.

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